BAIL SLIP

The Petitioner/Accused namely Sampath was directed to be relesed on bail as per order of this Court dated 19/6/2003 in Crl.M.P. No. 5186/2003.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 09.04.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.R.C.No.864 of 2003

Sampath .. Petitioner/Accused

Vs.

1. State represented by
Inspector of Police,
All Women Police Station,
Kanchipuram.

2.M. Santhi .. Respondents

(R-2 Impleaded as per the order of this Court dated 21/12/2004 in Crl.M.P.No. 12370/2004)

Prayer:
This Criminal Revision has been preferred against Order dated 12.06.2003 made in C.A. No.69 of 2000 on the file of the learned Additional District and Sessions Judge cum Fast Track Judge, Kanchipuram.

For Appellant : Mr.K. Srinivasan

For Respondent-1 : Mr.V.R.Balasubramanian
Additional Public Prosecutor.
For Respondent- 2 : Mr. G. Vinoth kumar.

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JUDGMENT

This revision has been preferred against the judgment in Crl.R.C.No.69 of 2000 on the file of the learned Additional District and Sessions Judge cum Fast Track Judge, Kanchipuram.

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2. The accused was charged under section 498(A) of IPC for having subjected his wife Santhi to cruelty by scolding her in filthy language, by denying conjugal relationship to her, by beating and kicking her and throwing her out of his house frequently and even Santhi was denied proper food by the accused.

3. The case was taken on file by the learned Judicial Magistrate No.II , Kanchipuram as C.C.No. 195 of 1997. On appearance of the accused on summons, the copies under section 207 Cr.P.C were furnished to the accused and the charge was framed under section 498(A) IPC and when the accused was questioned, he pleaded not guilty.

4. On the side of the prosecution, PW.1 to PW.8 were examined and Ex.P1 to Ex.P3 were exhibited.

5. After going through the oral and documentary evidence available before him, the trial court had found the accused guilty under section 498 (A) IPC and sentenced to undergo one year R.I and also slapped a fine of Rs.1,000/- with default sentence.

6. Aggrieved by the findings of the learned trial Judge, the accused preferred an appeal in C.A.No.69 of 2000 on the file of the learned Additional District and Sessions Judge cum Fast Track Judge, Kanchipuram. The learned first appellate court also after hearing the learned counsel appearing for both sides and after going through the oral and documentary evidence let in before the trial court and after perusing the judgment of the trial court has concurred with the findings of the learned trial judge, thereby confirmed the judgment of the trial court, dismissing the appeal, which necessiated the accused to approach this court by way of this criminal revision.

7. When the matter was taken up for hearing, the learned counsel appearing for the revision petitioner, Thiru.Srinivasan would represent that now the complainant Tmt.Santhi , who is the wife of the accused has reconciled herself and she is now living with the accused and both the accused and the complainant Santhi are leading a peaceful matrimonial life and that even though the offence under which the accused has been charged is not a compoundable one under section 320 Cr.P.C, taking into consideration the subsequent events i.e., amicable settlement entered into between the complainant and the accused, a lenient view may be taken while awarding sentence on the accused. The learned counsel would focus the attention of this court to a judgment of the Apex Court in "2003 Supreme Court Cases Criminal 848, B.S.Joshi and others ...appellants ..vs.. State of Haryana and another ...respondents " wherein the inherent powers under section 482 Cr.P.C of the Court has been dealt with while dealing with the matters relating to matrimonial disputes. Wherein it has been specifically held by the Hon'ble Apex Court that even in a non compoundable offences like 498(A) and 406 IPC which does not fall under section 320 Cr.P.C, the court can exercise its inherent powers under

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section 482 Cr.P.C. The point that arose before the Hon'ble High Court of Haryana was that whether the High Court can exercise its inherent powers in quashing a criminal proceedings or FIR or complaint under section 320 Cr.P.C, in cases coming under the purview of section 498 (A) and 406 IPC. While holding that even under such circumstances where a case which does not fall under section 320 Cr.P.C, the court can exercise its inherent powers under section 482 Cr.P.C, the Hon'ble Apex Court has held as follows:-

> " In the present case, the wife filed an affidavit that the FIR was registered at her instance due to temperamental differences and implied imputations. There may be many reasons for not supporting the imputations. In such eventuality, there would almost be no chance of conviction. So, it would not be proper to decline to exercise power of quashing on the ground that it would be permitting the parties to compound non-compoundable offences. It would, however, be a different matter if the High Court on facts declines the prayer for quashing for any valid reasons including lack of bonafides. Further , in Madhavrao Jiwajirao Scindia V. Sambhajirao Chandrojirao Angre, (1988) 1 SCC 692 " it was held that while exercising inherent power of quashing under section 482, it is for the High Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. The special features in such matrimonial matters are evident. It becomes the duty of the court to encourage genuine settlements of matrimonial disputes."
>
> .....
>
> "The object of introducing Chapter XX-A in IPC was to prevent torture to a woman by her husband or by relatives of her husband. Section 498(A) was added with a view to punishing a husband and his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. A hypertechnical view would be counterproductive and would act against the interest of women and against the object for which this provision was added. There is every likelihood that non-exercise of inherent power to quash the proceedings to meet the ends of justice would prevent women from settling earlier. That is not the object of Chapter XX-A of IPC.

8. The important point to be noted in this revision is that when the revision is pending before this court, at the instance of this court Smt.Santhi, wife of the accused was impleaded as second respondent in the

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revision and she is also present today along with the accused, who is her husband and Smt. Santhi has filed an affidavit before this Court dated 9.4.2007. She would swear to state that her husband had filed O.S.No.266 of 1998 on the file of learned Additional District Munsif, Kanchipuram to declare the marriage between them as null and void on the ground that the marriage was solemnised under force and compulsion and that an exparte decree was passed in favour of the plaintiff / husband on 6.10.1999 and to setaside the said exparte decree, she has filed an application and the same was withdrawn by her on 8.10.2004, since the difference of opinion between her and the accused/husband is now resolved. As on date both the accused and Santhi are living happily and leading a peaceful matrimonial life. She has further stated in crystal clear terms that she is not interested to pursue the case. She has further stated that on her own volition and without any external pressure, she has filed this affidavit. As observed by the Hon'ble Apex Court in the judgment cited above, the duty of the court is to encourage genuine settlement of matrimonial disputes between the parties, I am of the considered view that due weight and respect shall be attached to the affidavit filed by the wife Santhi before this court. The learned counsel for the revision petitioner also relied on an unreported judgment of this court in "Crl.A.No.608 of 1997, A. Malaichami ....appellant .vs. State, represented by S.I. Of Police, All Women Police Station, Ramanathapuram ...respondent" wherein in a case of similar nature, this court has taken a lenient view on the accused/husband after coming to know that both the husband and wife got separated and the wife was remarried, the accused was let off under section 4 of the Probation of Offenders Act. Under such circumstances, I am of the view that this is fit case in which the provision under section 3 of the Probation of Offenders Act can be applied. The learned counsel Mr.K.Srinivasan gives an undertakaing that the accused is prepared to file an affidavit to the effect that he will take care of his wife Smt.Santhi and lead a peaceful life hereafter, in the course of the day. In this regard, the learned Additional Public Prosecutor Thiru.Balasubramanian was also heard and the learned Additional Public Prosecutor has no serious objection for modifying the sentence in the above lines.

9.A joint affidavit of the accused and the defacto-complainant has been filed before this court stating that all differences between the husband and wife has been resolved amicably and both have assured before this Court that they will lead a happy life hereafter and that the accused has given an undertaking that he will not cause any problem to his wife Santhi. The defacto-complainant, wife Santhi, has also stated that in view of the present position, she is not interested to pursue the case further. In the common affidavit both would state that the common affidavit has been filed without any external pressure, but with the consent of both the parties.

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10. In fine, the revision petition is disposed of in the following manner. As far the conviction aspect is concerned, the judgment of the learned first appellate court in C.A. No.69 of 2000 is confirmed with the following modifications in the sentence. The accused is released under section 3 of the Probation of Offenders Act, 1958 on admonition instead of one year R.I and a fine of Rs.1,500/- with default sentence. The fine is to be returned to the accused. It is represented by the learned counsel that the accused is working as Junior Assistant in TNEB. The sentence under section 3 of the Probation of Offenders Act imposed on the accused in this revision will not a disqualification for his Government Service as contemplated under section 12 of the Probation of Offenders Act.

mra

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To,

1.The Additional District
and Sessions Judge, FTC,
Kancheepuram

2.The Judicial Magistrate No.II,
Kancheepuram.

3.-do- thro The Chief Judicial Magistrate,
Chengalpattu.

4.The Inspector of Police,
All Women Police Station,
Kancheepuram.

5.The Public Prosecutor,
High Court, Madras.

6.The Superintendent of Central Prison
Vellore.

+ One cc to Mr. K. Srinivasan Advocate sR 22568

TEJ (co)

sg 18/5/07

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